County of Fairfax, Virginia

AMENDMENT

MAR 3 1 2017

AMENDMENT NO. 5

CONTRACT TITLE: Fingerprint Identification System

CONTRACTOR	SUPPLIER CODE	CONTRACT NO.
Morpho Trak, LLC 5515 E. La Palma Ave, Suite 100 Anaheim, CA 92807	1000011602	4400006490

By mutual agreement, contract 4400006490 is hereby amended as follows:

- **ADD:** Amazon Web Services (AWS) cloud-hosted Morpho Face Detective (MFD) and Morpho Face Expert (MFE) solution on Proposal #00-000985-C.

ACCEPTANCE:

BY: _____ President & CEO
(Signature) (Title)

Celeste Thomasson 03/29/2017
(Printed) (Date)

All other prices, terms and conditions remain the same.

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Contracts Manager

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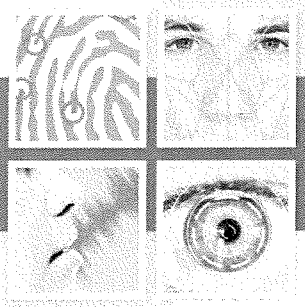

Northern Virginia Regional Identification System

NOVARIS MFD / MFE
Cloud-Hosted Model

Amendment No. 5
00-000985-C
December 7, 2016

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SAFRAN
Morpho

Contents

1 INTRODUCTION 1

2 SOLUTION OVERVIEW 1

3 PRODUCT DESCRIPTIONS 3

3.1 MORPHO FACE DETECTIVE 3

3.2 MORPHO FACE EXPERT 14

4 SOLUTION CONFIGURATION 18

5 TRAINING 19

6 NOVARIS MFD / MFE PRICING 20

7 ADDITIONAL TERMS 22

8 *ADVANTAGE* SOLUTION SUPPORT 23

9 BIOMETRIC CLOUD SOLUTION AND SYSTEM SALES AGREEMENT 24

List of Figures

Figure 1: Multi-Dimensional Geometrical Matching 5
Figure 2: Eigenfaces 6
Figure 3: Side-by-Side Comparison of Unknown Person and Candidate 7
Figure 4: Three Examples of Vertical Comparison of Side-by-Side Images 7
Figure 5: Three Examples of Horizontal Comparison of Side-by-Side Images 8
Figure 6: Four Examples of Transposing/Blending Side-by-Side Images 8
Figure 7: Demographic Search Results 9
Figure 8: Reference Image Selected from Demographic Search Results 10
Figure 9: Results Workspace View 11
Figure 10: Reference Image Selected from Demographic Search Results 12
Figure 11: Sample Morpho Face Detective Lineup 13
Figure 12: Face Enhancement Screen 17

List of Tables

Table 1: The Four Steps in the Morpho Face Detective Identification Process 4
Table 2: The Six Steps in the Morpho Face Expert Face-Recognition Process 15
Table 3: MFE / MFD Training Overview 19
Table 4: NOVARIS MFD / MFE Pricing 20
Table 5: NOVARIS MFD / MFE Solution – Payment Pricing 21
Table 6: *Advantage* Solution Support 23

1 Introduction

The Northern Virginia Regional Identification System (NOVARIS) has requested a quote for a secure, cloud-hosted solution to replace the existing NOVARIS mugshot system, which was provided by MorphoTrust.

2 Solution Overview

MorphoTrak is proposing an Amazon Web Services (AWS) cloud-hosted Morpho Face Detective (MFD) and Morpho Face Expert (MFE) solution. After the new MFD / MFE system has been deployed, and after the existing mugshot system records have been migrated from the NOVARIS MorphoBIS to the AWS MFD / MFE system, the new system will interface with:

- NOVARIS MorphoBIS to add, delete, and update transactions from NOVARIS.
- LInX (XML via SOAP web service) to add, delete, and update transactions to LInX.
- FBI NGI system (Increment IV): The MFD / MFE system can optionally submit a facial recognition search (FRS) request transaction to the FBI NGI system, if the state can support such a request.

The new MFD / MFE system will include the following:

- 1 matcher service
- Dedicated database that is sized for 2 million records
- 25 MFD / MFE application licenses
- Ability to perform approximately 9 searches per hour, or a total of 200 per day

MFD / MFE Hosted in the Cloud – Increased security, availability, and scalability via a cloud-hosted solution

The MFD / MFE system will be deployed as a cloud-hosted solution. This solution offers a high level of security, scalability, and increased availability and speed.

The proposed system will be hosted in the AWS cloud. AWS is structured to protect and preserve the most-sensitive government data. NOVARIS can be confident in choosing Morpho Cloud to safeguard the function and content of your biometric identification solutions.

The cloud service is hosted within the U.S. AWS also meets a broad set of international as well as regional and industry-specific compliance standards, such as the Federal Information Processing Standard (FIPS 140-2), ISO / IEC 27018 and ISO / IEC 27001 / 27002:2013, and Service Organization Control (SOC 1 and SOC 2).

We understand that for NOVARIS to realize the benefit of the cloud, you must be willing to entrust AWS with one of your most-valuable assets – your data. After you invest in the proposed cloud-hosted solution, you know that your customer data is safe, the privacy of your data is protected, and that you retain ownership of and control over your data.

The Amazon Web Services (AWS) cloud platform provides security measures, such as two-factor authentication, encryption of data in transit and at rest, and multi-tiered default deny firewall security zones.

In addition, the cloud provides security measures, such as two-factor authentication, encryption of data in transit and at rest, and multi-tiered default deny firewall security zones that are monitored by intrusion-detection systems.

Use of cloud resources enables rapid scalability (resource elasticity) for critical events. Available resources can temporarily increase, as needs dictate (based upon mutual agreement), to allow maintenance of required service levels. Resources can then be scaled back after the need abates. NOVARIS will receive the benefits of the MFD / MFE cloud service, such as future software and technology upgrades that will regularly enhance the service's capabilities, elasticity that will ensure the best response time by automatically scaling the service your needs, while boosting efficiency and lowering IT costs.

3 Product Descriptions

The MFD application and the MFE application differ in the following ways:

- **Morpho Face Detective (MFD)** is a tool for investigators to interact with eye-witnesses and perform basic face searches. It enables the officer to take the suspect's demographic and biometric information from an unknown photo source and match it against a "known" photo for identification purposes.
- **Morpho Face Expert (MFE)** is a facial recognition application that meets the facial identification requirements of law enforcement agencies, intelligence services, and homeland security. Robust and scalable, Morpho Face Expert includes case evidence management tools, biometric matching and forensic evaluation tools.

3.1 Morpho Face Detective

By using Morpho Face Detective, investigators can create digital photo lineups and mugbooks from a database of facial images. These photo collections are used to help crime scene witnesses identify suspects.

Morpho Face Detective supports both biometric face searches and non-biometric demographic searches.

Morpho Face Detective is a web-based application that currently supports the following browsers: Microsoft Internet Explorer, Mozilla Firefox, and Google Chrome. The application accesses data that is stored in the MorphoBIS Face Service.

Morpho Face Detective procedures comply with standard laws and best practices, and efficiently manage witness viewing and reporting. The application can save information about the viewer, as well as witness viewing results. Viewer information includes data such as the witness's name, comments, and the time spent looking at certain images. Authorized users can access and update individual master records and remove photos from the database.

Key Features: Morpho Face Detective Lineups and Mugbooks

- A lineup is a limited collection of photographs presented to a witness for possible identification of a subject.
- Morpho Face Detective automatically generates a set of photos that resemble the suspect. The suspect photo and the look-alikes comprise the lineup.
- A mugbook is an unlimited set of photographs.
- Morpho Face Detective searches the database for images corresponding to the description made by an eye witness, and generates potential matches for review.
- Lineups and mugbooks can be stored in the database and retrieved for later use.

Table 1 summarizes the Morpho Face Detective identification process.

Table 1: The Four Steps in the Morpho Face Detective Identification Process

Morpho Face Detective Identification Process	
Step 1. Upload Face Image of Unidentified Person	
Upload the face image of an unknown individual by using the Morpho Face Detective application. The photo can be in any standard format, such as GIF or JPEG.	
Step 2: Search the Face Image Database	
Initiate a search of the face image database. Optionally, you can use filters, such as sex and race. As shown in Step 3, the search creates a list of candidates whose faces most closely match the unknown person.	
Step 3: Examine the Group of Candidates	
After the search is complete, examine the list of candidates. The most likely match is shown in the upper-left corner of the group.	
Step 4: Use Morpho Face Detective Tools to Make a Positive ID	
Use a variety of Morpho Face Detective tools (such as the side-by-side comparison shown at right) to help positively identify the unknown person.	

Investigative Search Types

Morpho Face Detective enables investigators to perform two kinds of searches:

- **Image-based biometric search** - The investigator submits an unknown subject's photo for a facial-recognition search against the MorphoBIS Face Service database.
- **Demographic search** - The investigator submits demographic information about the suspect for search against the database.

Filters can be applied either before the search or after the search to fine-tune the results. This allows the investigator to refine the search as new information becomes available.

MorphoTrak Proprietary and Confidential Trade Secret Information

Biometric Face Search

MorphoTrak Proprietary and Confidential Trade Secret Information

MorphoTrak Proprietary and Confidential Trade Secret Information

MorphoTrak Proprietary and Confidential Trade Secret Information

Demographic Search

When a witness describes a suspect, the investigator has no picture to search against the database. Morpho Face Detective supports demographic searches by using the descriptors the witness provides. To perform a demographic search, the investigator selects the relevant filters and enters the associated information, such as eye color, race, height, and sex. When the search is complete, Morpho Face Detective displays the candidates in the Results window. Figure 7 shows an example of demographic search results.

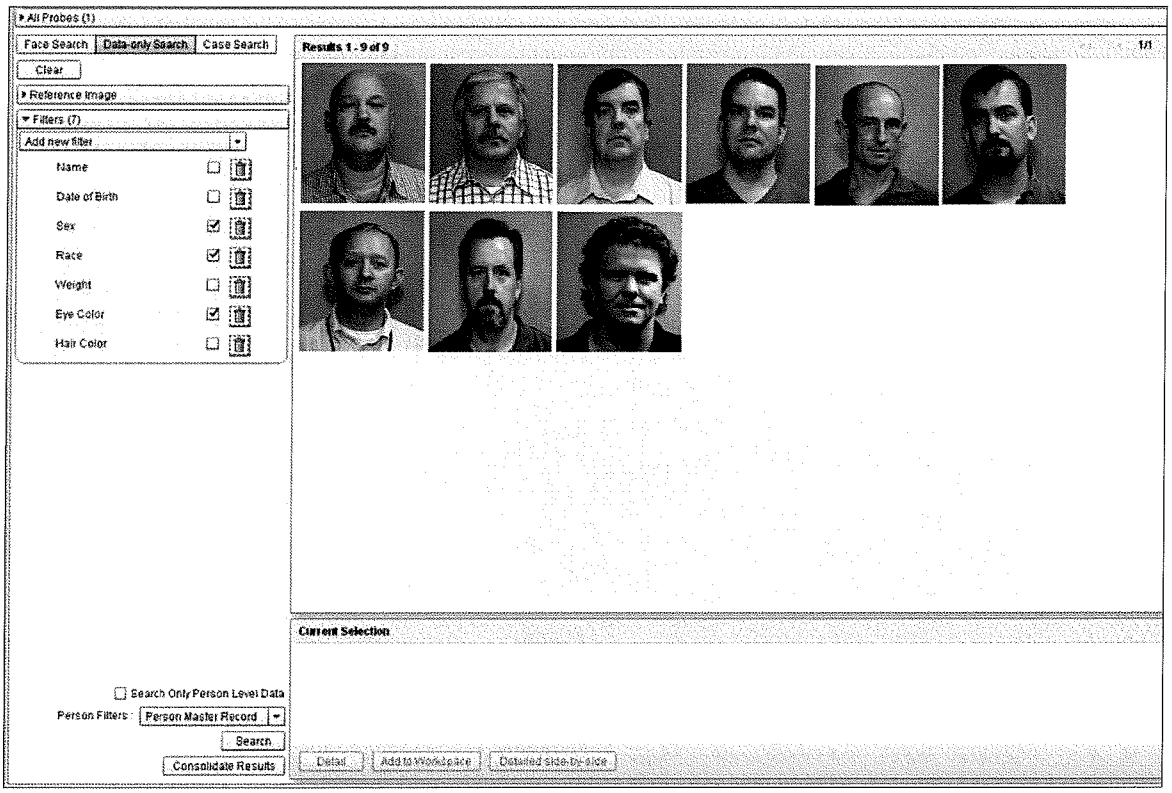


Figure 7: Demographic Search Results

Because Morpho Face Detective supports demographic searches, investigators can search for a suspect even when no probe photo is available.

After a face search or a demographic search is complete, an investigator can, for comparison purposes, choose a reference image from among the results. The investigator can start a new search by using the reference image, or add the selected image to a lineup for a witness to review. In the upper-left corner of the Data-only Search screen, Figure 8 shows a reference image from a demographic search.

Figure 8: Reference Image Selected from Demographic Search Results

By using the results from a face search or a demographic search, an investigator can choose a reference image on which to run a new search, or add the reference image to a lineup for a witness to review.

Results Workspace

Figure 9 shows an example of the Results Workspace. Operators can add an image to the Results Workspace by dragging the image from the candidate list or marking it as a Hit from the Consolidated View.

Figure 9: Results Workspace View

By dragging an image from the candidate list, operators can add an image to the Results Workspace.

In the Results Workspace, investigators can perform the following actions:

- **Consolidate results** – Combines the search results from all search images and displays the Consolidated Results.
- **Upload, capture, or edit images** – Used to add images to the workspace from external sources.
- **Print form** – Used to print a paper lineup for future reference.
- **Save lineup** – Used to save images, lineup data, and comments for future reference.

For comparison purposes, the investigator has the option to choose a reference image from among the results. The investigator can start a new search by using the reference image, or add the selected image to a lineup for witness review. Figure 10 shows the selection of a reference image.

Figure 10: Reference Image Selected from Demographic Search Results

The investigator can start a new search by using the reference image, or add the selected image to a lineup for witness review.

Lineups and Mugbooks

Both lineups and mugbooks are filtered by demographics, such as height, race, sex, and hair color, and may optionally be filtered by other demographics, such as previous charges. Biometric filtering of face images is used in preparation of a mugbook, but it is typically not used in preparation of a lineup. After the operator sets the filters, Morpho Face Detective generates the photo collection, and the investigator presents it to the witness. After review by the witness, lineups and mugbooks can be stored in the database and retrieved as required. Figure 11 shows an example of a Morpho Face Detective lineup.

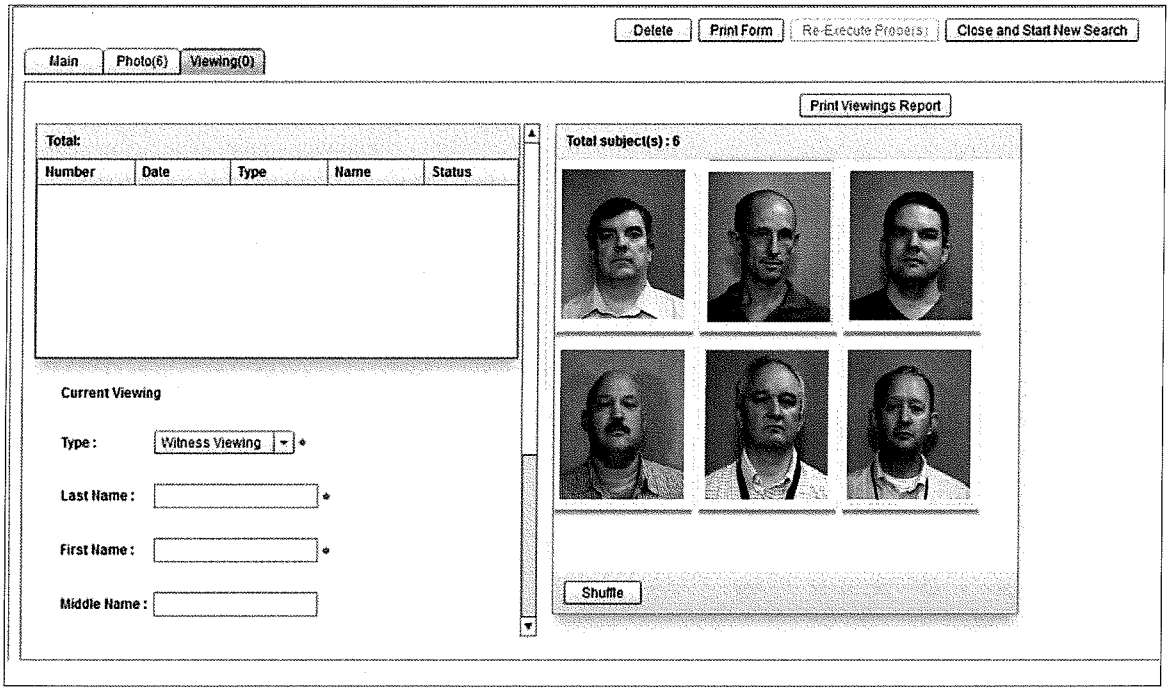


Figure 11: Sample Morpho Face Detective Lineup

After review by a witness, lineups and mugbooks can be stored in the database and retrieved as required.

Reviewing Results

After a witness has finished viewing a lineup or a mugbook, the investigator can display the viewing results. A summary of the results indicates the number of matches, possible matches, and no-matches, in addition to thumbnails of all the images in the viewing screen.

Additional capabilities are available when reviewing search results. For instance, individual case history details of suspects can be opened for review. The investigator can also place matching candidates in the workspace for use in lineups.

3.2 Morpho Face Expert

Morpho Face Expert is mainly used for solving crimes by using photo evidence captured from surveillance videos and other sources where a face image exists.

Morpho Face Expert quickly and accurately performs biometric matching of face images (face recognition). Users search faces captured by video or digital photography against a database of face images. Searches can be conducted with or without descriptor filters. Morpho Face Expert is a full-featured, powerful tool that can:

- Help solve a crime by comparing a face image related to a crime (for example, a photo taken by a witness, or an image captured on CCTV video) to pictures of known offenders.
- Link crimes when they are associated with face images of the same person, such as the same bank robber caught on video at multiple crime scenes.
- Provide images for use in the search for missing and wanted people, and identification of bodies.
- Support background checks. For example, a photo of a prospective caregiver can be searched in Morpho Face Expert to verify that the individual is not in a criminal database.
- Eliminate duplicate records within the criminal database by comparing the face of a newly enrolled person to the face images of all person records stored in the system.

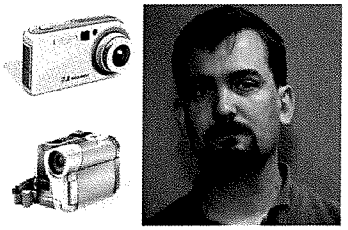
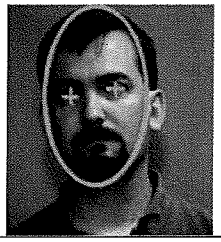
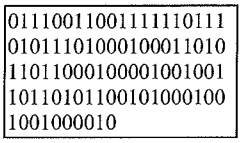
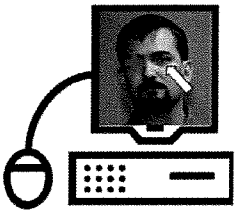
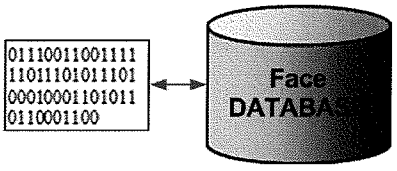
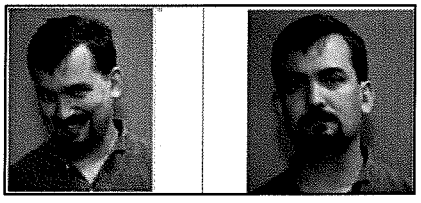
Key Features of Morpho Face Expert:

- Automatic face finding and tracking in photos or videos
- ISO 19794-5 and ANSI / NIST-compliant face-image acquisition
- The ability to use descriptors as filters to improve search results
- Fast and accurate biometric searches
- Enhancement of poor-quality images and images where the subject is not optimally positioned
- Support for a variety of formats, including:
  - Image formats: JPEG, JPG2000, TIFF, GIF, PNG, and BMP
  - Video formats: .avi containers, MPEG4-part 2 codecs
- The ability to set up watch lists and generate reports
- Traceability of all image enhancements for submission to court
- Scalable configuration that can be expanded to handle millions of records

Morpho Face Expert provides users with tools for biometric face recognition, case evidence management, and forensic evaluation. Morpho's face-recognition algorithms generate highly discriminating biometric templates and perform accurate face comparisons, even with low-resolution images.

The Morpho Face Expert face-recognition system consists of a feature-extraction component and the matching engine. Table 2 provides an overview of the face-recognition process.

Table 2: The Six Steps in the Morpho Face Expert Face-Recognition Process

Morpho Face Expert Process	
Step 1: Face Image Acquisition Face images can be captured in a controlled environment, such as when taking a photo of an applicant, or in an uncontrolled environment, which is typical for search images. After you have a person record, you can create multiple appearances for that person.	
Step 2: Automatic Pre-processing Before comparing faces, it is necessary to isolate the faces in images that may contain other information, and adjust the faces to the same scale, with the head positioned vertically.	
Step 3: Template Extraction of Characteristics A mathematical representation of the face, called a template, is automatically created.	
Step 4: Quality Control As the image is analyzed and the template is computed, Morpho Face Expert determines whether the template is a reliable representation of the original face image. The quality control process allows an operator to manually adjust the image to increase matching accuracy. Quality control can be performed on newly acquired images or on pre-existing database images.	
Step 5: Matching The system compares the search image template to the database of image templates. ♦ Each comparison produces a score. ♦ The higher the score, the greater the similarity between the search image and database image.	
Step 6: Verification The matching system returns the result of the search. ♦ If the database contains candidates above the score threshold, the candidates above the threshold are highlighted with a blue border. All candidates are sorted by descending score. ♦ If the database does not contain any candidates above the score threshold, the candidates are listed in descending order but are not highlighted. ♦ When the candidate image belongs to a person record containing links to additional face images, all the linked face images are returned for evaluation by the Image Expert.	

Preserving and linking the original evidence and presenting all available data in the person record are critical to intelligence and investigative workflows. Information presented in the Morpho Face Expert face comparison screens includes all prior mugshots (front view and profile), original criminal case evidence, and demographic descriptions. Access to this information makes the system more efficient, and helps the Image Expert make accurate identifications.

Face-Image Acquisition

The Morpho Face Expert application allows you to acquire face images that are captured in any standard format (for example, GIF and JPEG). Any image-capture device, such as a camera, cell phone, or closed-circuit video (with any proprietary codec removed), can acquire the photos. Face images can be captured in a controlled environment, such as when taking a database photo of an applicant, or in an uncontrolled environment, which is typical for search images. Images taken in an uncontrolled environment are imported into the Morpho Face Expert system by using the Morpho Face Expert client application.

Automatic Pre-processing

Before comparing faces, it is necessary to isolate the faces in images that may contain other information, and adjust the faces to the same scale, with the head positioned vertically.

- Adjustment occurs automatically as new search images are received by Morpho Face Expert.
- When acquiring video images, the system can play the video and automatically extract faces that it finds within the video, saving time and effort.
- The Image Expert at the Morpho Face Expert workstation can make manual adjustments.

After the image is acquired, the operator creates a person record for the image.

Template Extraction

Before the MorphoBIS Face Service conducts a search, the face image is processed to extract information and convert it into a mathematical representation of the face (a face template), for automatic face recognition. Morpho face-recognition algorithms use this template for feature extraction.

- The template may represent visible features such as the location of the nose and eyebrows, distance between the eyes, nose width, and cheekbone shape.
- The template may also represent purely mathematical data such as the result of applying filters to the image.

Quality Control

As the image is analyzed and the template is computed, Morpho Face Expert determines if the template is a reliable representation of the original face image. The quality control process allows an operator to manually adjust the image to increase matching accuracy. Quality control can be performed on newly acquired images or images that already exist in the database. Figure 12 shows the Face Enhancement screen.

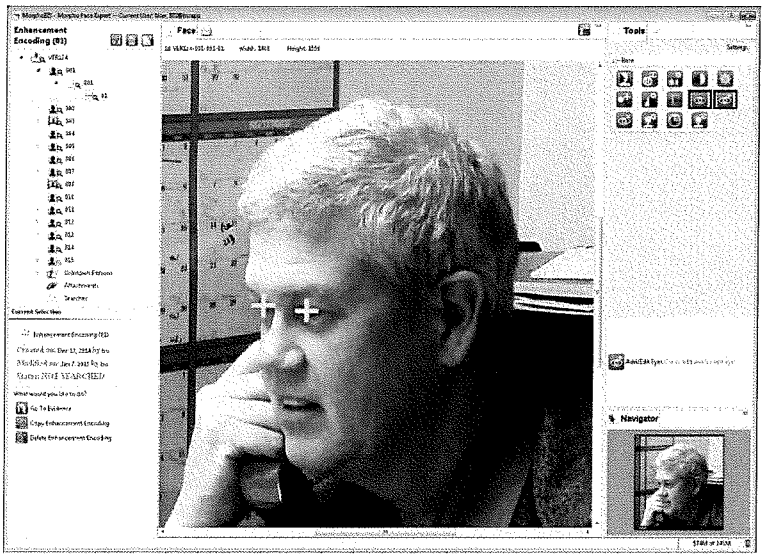


Figure 12: Face Enhancement Screen

Operators can manually adjust an image to increase matching accuracy.

Matching

To increase the accuracy of feature extraction, the matching engine uses several proprietary algorithms, including those listed here. Each algorithm adds a specific detail about the person's face characteristics. Morpho is unique in the face-recognition industry because we employ a multi-algorithm, multi-pass search method that incorporates local-feature algorithms and pattern-recognition algorithms rather than a single algorithm used exclusively for all face-recognition searches. By incorporating this six-algorithm, thirteen-pass method, we are able to show improved match results on all types of probe images: those that match best with local-feature algorithms and those that match best by using pattern-recognition algorithms.

The algorithms that are used depend upon items such as the quality of the search image and the candidate images, and the desired response time.

Similar to Morpho Face Detective, the Morpho Face Expert matching includes:

- **Multi-Dimensional Geometrical Matching** (see description on page 5)
- **Skin Texture Analysis** (see description on page 6)
- **Principal Component Analysis** (see description on page 6)

4 Solution Configuration

The proposed system comprises a MorphoBIS Face Service subsystem running in a cloud configuration and NOVARIS-provided workstations running the MFD and MFE applications:

- **MorphoBIS Face Service**: The MorphoBIS Face Service subsystem will be hosted in the AWS cloud. It consists of the Morpho Face matching database and workflow engines. The matching system's multiple face-recognition algorithms accurately match the face template from the search image against the database, and provide a candidate list of the most probable matching results.
- **MFD / MFE Application Licenses**: The cloud solution will include 25 MFD and 25 MFE concurrent application licenses. Expert examiners will submit face images for search from workstations running MFD and / or MFE, and they will evaluate the results returned from the matching service.

This cloud solution employs our proven MorphoBIS architecture, including an Oracle database; a Morpho workflow engine; the Morpho Biometric Search Services (MorphoBSS) matcher, and centralized reporting, auditing, and user administration. The architecture is scalable and adapts to any database size, transactional flow, and response time (with a minimum of 10 seconds per query due to the asynchronous nature of the workflows).

Integration with MorphoBIS

MFD and MFE are fully integrated into the MorphoBIS product line, and can be implemented seamlessly into a MorphoBIS system. The cloud service will store all the face images and templates.

MorphoBIS can manage access control for the face solution in the same way that access control is managed for other MorphoBIS applications. For instance, you can use MorphoBIS LDAP settings and users and roles to control the functions that users can perform within MFD and MFE. This reduces implementation time and effort.

5 Training

Training is tailored to each specific workstation type, and is customized to address the features, functions, and operating requirements of NOVARIS. Training will take place on the NOVARIS site equipment. All sessions include both classroom and hands-on training. Table 3 summarizes the courses that MorphoTrak will conduct.

Table 3: MFE / MFD Training Overview

Type of Training	Location	Number of Sessions	Course Overview
Morpho Face Detective *(2 Days)*	NOVARIS Site	4 ♦ 2-4 hr. blocks ♦ Up to 30 people per class if number of NOVARIS-supplied PCs are available	This course teaches the skills necessary to use the Morpho Face Detective Application and includes: ♦ Web based access / concurrent users ♦ Searches Data vs. Face ♦ Selecting probe ♦ Adding images to workspace ♦ Building lineups ♦ Wanted posters
Morpho Face Expert *(3 Days)*	NOVARIS Site	3 ♦ Each class 1 full day	This course teaches the skills necessary to use the Morpho Face Expert Application and includes: ♦ GUI navigation ♦ Case ID creation ♦ Importing photo / video ♦ Searching ♦ Face filler

Training Materials

The instructor-led courses will rely on realistic training scenarios that present the student with actual operational situations. Students will have access to a copy of the user documentation appropriate to the platform on which they are being trained. In addition, they will receive their own copy of the training exercises and other supporting materials.

Training materials provided will include, but are not limited to, user manuals (one set per workstation) and handouts supporting the lecture topics. Users keep their training materials for future reference, allowing them to review information when needed to further enhance their skills.

6 NOVARIS MFD / MFE Pricing

Table 4 describes MorphoTrak's proposed software and services.

Table 4: NOVARIS MFD / MFE Pricing

Qty.	Description
1	Face matching solution, including: ♦ A cloud-based face matching service ♦ Dedicated database that is sized for 2 million records ♦ Ability to perform 9 searches per hour, or a total of 200 searches per day
25	Concurrent MFD and MFE application licences
1	Data Migration of existing mugshots
	MorphoTrak Professional Services, including: ♦ Program Management ♦ Integration and Test ♦ User Documentation ♦ One-Year *Advantage* warranty, as described in Table 6
	Logistical Services, including: ♦ Shipping Carriage Paid To (CPT) Fairfax ♦ Delivery scheduled upon receipt of order

Table 5 provides the payment schedule.

Table 5: NOVARIS MFD / MFE Solution – Payment Pricing

Description	Annual Payment
Initial Payment*	$500,000
Year 1 Payment **	$186,143
Year 2 Payment **	$191,727
Year 3 Payment **	$197,479
Year 4 Payment **	$203,404
Year 5 Payment **	$209,506
Year 6 Payment **	$215,791
Year 7 Payment **	$222,265
Year 8 Payment **	$228,933
Year 9 Payment **	$235,801
TOTAL	**$2,391,049**

**Initial Payment is due at contract signature.*
***The first payment will be due at system acceptance 12 months after contract signature, with additional payments due every 12 months thereafter.*

Assumptions and Conditions

In developing this proposal, MorphoTrak has made the following assumptions:

- This is a cloud-based solution.
- NOVARIS will provide the necessary highly-available LAN and WAN secure connectivity to the cloud.
- The MFD / MFE software will be used on current NOVARIS workstation equipment.
- NOVARIS will be able to perform 200 daily searches by using the MFD / MFE applications.
- NOVARIS is responsible for providing the mugshot photos in NIST format.
- NOVARIS has requested 25 MFD and MFE floating (concurrent) licenses.
- Two days of on-site Morpho Face Detective training is required.
- Three days of on-site Morpho Face Expert training is required.
- NOVARIS will provide dedicated IT staff during the integration.
- NOVARIS is responsible for ensuring that the data is transmitted securely through the NOVARIS network.

7 Additional Terms

Additional engineering effort by MorphoTrak beyond the scope of the standard product will be quoted at a firm-fixed price based on our current service rates in effect at the time of the change, plus any related travel or administrative expenses. Assistance with training and questions for the agency's database or any programming, scripting, or review of programs beyond work quoted above are excluded from this offer. MorphoTrak assumes that organizations requesting these utilities have advanced programming expertise and will assume all responsibility for the deployment and support of the final application.

MorphoTrak shall own all right, title, and interest to any software developed under this contract. The Northern Virginia Regional Identification System (NOVARIS) (NOVARIS includes the following jurisdictions: Montgomery County, Prince George's County, Alexandria, Arlington, Falls Church, Fairfax City, Fairfax County, Prince William County, Loudoun County, Herndon, and Vienna) shall have an unrestricted license to use said software internally but not for any commercial purposes. The licensed software is a commercially valuable, proprietary product of MorphoTrak. The

MorphoTrak reserves the right to substitute hardware of equal value with equal or better capability, based upon market availability. If, however, such equipment is unavailable, MorphoTrak will make its best effort to provide a suitable replacement.

Prior to the expiration of the warranty for the above-mentioned equipment, MorphoTrak's Customer Support Organization will contact you to review continued maintenance and support options available for the first year. This support will be created to meet your site's support needs and will be renewable annually thereafter in accordance with MorphoTrak's Maintenance and Support Agreement.

Purchase orders should be sent to MorphoTrak by facsimile or postal service. Please direct all order correspondence, including Purchase Order, to:

Paul Tselepis
MorphoTrak, LLC
5515 East La Palma Avenue, Suite 100
Anaheim, California 92807

Phone: (703) 509-4694
Fax: (714) 238-2049
E-mail: paul.tselepis@morpho.com

MorphoTrak appreciates the opportunity to present this proposal. Product purchase will be governed by Fairfax County Contract 4400006490, the MorphoTrak Biometric Product and System Sales Agreement, a draft of which is attached for your convenience. If applicable, firm delivery schedules will be provided and development will commence after the NOVARIS and MorphoTrak have signed the finalized Requirements Definition Document (RDD). The NOVARIS payments are due to MorphoTrak as described in Table 5 on page 21. No subsequent Purchase Order can override such terms. Nothing additional shall be binding upon either party unless a subsequent agreement is signed by both parties.

8 *Advantage* Solution Support

Table 6 provides a summary of maintenance services and support for the cloud solution. Items designated as Optional are not included in any stated pricing.

Table 6: *Advantage* Solution Support

Biometrics Support Features	
Software Support M-F 8am-5pm Customer Local Time	**Included**
Unlimited Telephone Technical Support	√
Two Hour Telephone Response Time	√
Remote Dial-in Analysis	√
Software Standard Releases	√
Software Supplemental Releases	√
Automatic Call Escalation	√
Software Customer Alert Bulletins	√
Hardware Support-Onsite M-F 8am-5pm Customer Local Time	**Included**
On-Site Response	√
On-Site Corrective Maintenance	√
On-Site Parts Replacement	√
Preventive Maintenance	√
Escalation Support	√
Hardware Service Reporting	√
Hardware Customer Alert Bulletins	√
Parts Support	**Included**
Advanced Exchange Replacement Parts	√
Telephone Technical Support for Parts Replacement	√
Parts Customer Alert Bulletins	√
Software Uplifts	
Hours of Coverage Available up to 24 Hours Per Day, 7 Days/Week	Optional
One Hour Telephone Response	Optional
Hardware Uplifts	
Hours of Coverage Available up to 24 Hours Per Day, 7 Days/Week	Optional
Up to 4 Hours On-site Response	Optional

9 Biometric Cloud Solution and System Sales Agreement

THIS AGREEMENT made this 31 day of March, 2017 ("Effective Date"), by and between MorphoTrak, a Delaware limited liability company with its principal offices located at 5515 E La Palma av., Anaheim, CA 92807 ("MorphoTrak") and Fairfax County/ NOVARIS, a Virginia corporation with its principal offices located at 4890 Alliance Drive, Suite #2700, Fairfax, VA 22030 ("Customer") in pursuant to contract 4400006490.

WHEREAS, MorphoTrak is in the business of providing hosted security services; and

WHEREAS, Customer desires to access and use MorphoTrak's hosted security services; and

WHEREAS, MorphoTrak is willing to provide such services to Customer, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. DEFINITIONS

a. Acceptable Use Policy. "Acceptable Use Policy" means MorphoTrak's acceptable use of the system as per the Proposal.

b. Additional Service. "Additional Service" means any additional services that are mutually agreed to and executed by the parties. These services are subject to the terms and conditions of this Agreement.

c. Documentation. "Documentation" means the published user manuals and documentation that MorphoTrak makes available for the Service or the Site that are provided by MorphoTrak to Customer.

d. Payment Schedule. "Payment Schedule" means Section 6 of the Proposal.

e. Proposal. "Proposal" means document reference 00-000985-C issued by MorphoTrak, and submitted with the service agreement.

f. Service(s). "Service(s)" mean the Software Service and the Additional Service.

g. Software. "Software" means software owned or licensed by MorphoTrak.

h. Software Service. "Software Service" means the hosted Software service operated by MorphoTrak through the Site, as more fully described in this Proposal.

i. Site. "Site" means the hosted solution operated under this Agreement by or on behalf of MorphoTrak for access by Customer.

j. Term. "Term" has the meaning as set forth in original contract 4400006490.

k. User. "User" means a Customer employee that has been assigned login credentials to the Site.

2. SERVICES, ACCESS AND USE

a. Services and Licenses.

i. Customer hereby engages MorphoTrak to provide and perform the Services and MorphoTrak hereby agrees to perform the Services, in accordance with the terms of this Agreement.

ii. MorphoTrak grants to Customer, a limited, non-exclusive, non-transferable, non-assignable, non-sublicensable, license for Users to access and use the Site to obtain the Software Service,

subject to the terms and conditions of this Agreement.

iii. Customer agrees to notify MorphoTrak immediately of any unauthorized use of its login credentials to the Site or any other breach of security. Customer is responsible for all Users and all use of Customer's login credentials.

b. Hosting, Training, and Support.

i. Hosting. MorphoTrak will notify Customer when the Software Service will be available to Users ("Launch"). During the Term, MorphoTrak will be responsible for hosting and operating the Site and providing the Software Service to Customer. MorphoTrak may provide these services directly or through subcontractors, provided that any such delegation to a subcontractor shall not relieve MorphoTrak of its obligations to Customer under this Agreement.

ii. Training. MorphoTrak agrees to make available Documentation that provides Users with basic information regarding use of the Software Service. Any additional training to be provided by MorphoTrak to Customer under this Agreement will be described in a written training plan that is made part of a Proposal as Section 5 developed by the parties after the Effective Date. Customer will notify MorphoTrak immediately if a date change for a scheduled training program is required. If MorphoTrak incurs additional costs because Customer reschedules a training program less than thirty (30) days before its scheduled start date, such additional costs should be subject to prior written approval by the Purchasing Agent. Unless otherwise agreed, technical training and support will only be provided to Customer's representatives, as may be updated by Customer from time to time ("Technical Representatives"). Such Technical Representatives will possess adequate technical skills and understanding of the Software Service to enable the Technical Representatives to obtain the benefits of technical training and support for the Software Service.

c. Additional Services. MorphoTrak will perform Additional Services, such as configuration, advanced training, and consulting services, as more fully set forth in the service description set forth in the proposal, and will provide the deliverables and/or Documentation associated with any such Additional Services (collectively, "Deliverables") as mutually agreed upon between MorphoTrak and Customer. Customer will pay MorphoTrak for the Additional Services at the rates set forth or fees set forth in a contract amendment. Customer will reimburse MorphoTrak for all reasonable out-of-pocket expenses incurred in the performance of the Additional Services, provided that they are approved in writing by Customer in advance. Customer shall provide MorphoTrak with reasonable work space, materials, access to computer systems, access to management/personnel, required approvals, and timely assistance and information required to perform the Additional Services.

d. Acceptable Use Policy. Customer agrees to comply with the Acceptable Use Policy. Violation of the Acceptable Use Policy may result in suspension of Customer's access to the Site. Unless MorphoTrak believes an immediate suspension is required, MorphoTrak will provide reasonable notice before suspending Customer's access to the Site.

e. Technical Limitations. Customer must comply with, and may not work around, any technical limitations on the Site that allow Customer to use it only in certain ways. Customer may not download or make copies of Software Service from the Site except as explicitly authorized in writing by MorphoTrak.

3. CHANGES MorphoTrak will not make any changes to the Software Service that adversely and materially affect Customer's use of the Software Service after Launch.

4. PRICING AND PAYMENT

a. Pricing. In consideration of the delivery of the Software Services, Customer hereby agrees to pay to MorphoTrak the fees set forth in the proposal (Pricing, Section 6 of the proposal). Pricing for Services is subject to change only if the parties mutually agree to a new Pricing schedule.

b. Payment Terms.

i. MorphoTrak will invoice Customer for the Fees as set forth in the proposal (Pricing, Section 6 of the proposal) throughout the Term. Customer will pay all undisputed Fees to MorphoTrak within 20 days of receipt of MorphoTrak's invoice.

ii. MorphoTrak will invoice Customer for the actual and reasonable out-of-pocket expenses incurred by MorphoTrak in the performance of the Services approved in advance in writing by Customer. Such expenses are in addition to the Service fees set forth in the Pricing schedule of the proposal.

iii. The obligation of the Customer to pay compensation due MorphoTrak under this Agreement is subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations. The Customer's obligations to make payments during subsequent fiscal years are dependent upon the same action. If such an appropriation is not made for any fiscal year, this Agreement shall terminate effective at the end of the fiscal year for which funds were appropriated and the Customer will not be obligated to make any payments under the Agreement beyond the amount appropriated for payment obligations under the Agreement. The Customer will provide MorphoTrak with written notice of non-appropriation of funds within thirty (30) calendar days after action is completed by the Board of Supervisors. However, the Customer's failure to provide such notice will not extend the Agreement into a fiscal year in which sufficient funds have not been appropriated.

5. REPRESENTATIONS, WARRANTIES AND DISCLAIMERS

a. Limited Warranty. MorphoTrak warrants that (i) the Software Service will conform to MorphoTrak's published specifications and perform in accordance with the Documentation, (ii) the Site and Software Service conforms and will continue to conform to all applicable laws and regulations, and (iii) the Services will be performed in a professional manner by duly qualified MorphoTrak staff using reasonable care. Customer acknowledges that the Services may not satisfy all of Customer's requirements, and access to the Site or use of the Software Service may not be uninterrupted or error-free.

b. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE EXISTING CONTRACT 4400006490, PROPOSAL 00-000985-C, AND THE RDD, ALL WARRANTIES, CONDITIONS, AND REPRESENTATIONS, WITH RESPECT TO THE SITE OR THE SOFTWARE SERVICE, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS BY MORPHOTRAK, ITS LICENSORS OR REPRESENTATIVES OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE) ARE HEREBY OVERRIDDEN, EXCLUDED AND DISCLAIMED.

6. LIMITATION ON LIABILITY

a. NOTWITHSTANDING ANYTHING PROVIDED ELSEWHERE IN THIS AGREEMENT, UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR THE OTHER PARTY'S CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES OR LOST PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE, ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY, BREACH OF

CONTRACT, MISREPRESENTATION, STRICT LIABILITY IN TORT OR OTHERWISE.

b. EXCEPT FOR MORPHOTRAK'S LIABILITY FOR PERSONAL INJURY, DEATH PROPERTY DAMAGE, INTELLECTUAL PROPERTY INFRINGEMENT, AND LIABILITY FOR DISCLOSURE OF PERSONALLY INDENTIFIABLE INFORMATION AND CUSTOMER CONFIDENTIAL INFORMATIION, INDEMNIFICATION OBLIGATIONS AND OWNERSHIP (SECTION 7), IN NO EVENT WILL THE AGGREGATE LIABILITY WHICH EITHER PARTY MAY INCUR IN ANY ACTION OR PROCEEDING EXCEED THE TOTAL AMOUNT PAYABLE UNDER THE CONTRACT. THIS SECTION WILL NOT APPLY ONLY WHEN AND TO THE EXTENT THAT APPLICABLE LAW EXPRESSLY PROHIBITS THE APPLICATION OF THIS SECTION.

c. This **Section 6** shall not apply to Customer's obligation to pay Fees to MorphoTrak.

7. OWNERSHIP

a. MorphoTrak Technology. All intellectual property, trademarks, service marks, patents, patent rights, copyrights, trade secrets, and other proprietary rights in or related to the Site or Software Service, together with all ideas, concepts, techniques and methodologies conceived and first reduced to practice by MorphoTrak (collectively, "MorphoTrak Technology") are and will remain the exclusive property of MorphoTrak or its licensors (whether or not specifically recognized or perfected under local applicable law), subject to Customer's and its customers' rights in any data processed through the Site or the Software Service. Customer will not take any action that jeopardizes MorphoTrak's or its licensor's proprietary rights or acquire any right in the MorphoTrak Technology, except the limited use rights specified in **Section 2**. MorphoTrak or its licensors will own all rights in any copy, translation, modification, adaptation or derivation of the MorphoTrak Technology, including any improvement or development thereof.

b. Customer Content. Customer reserves all of its rights in all (i) data and transactions input through or processed by the Software Service and (ii) all intellectual property, trademarks, service marks, patents, patent rights, copyrights, trade secrets, and other proprietary rights in or related to requirements and specifications provided by Customer, together with all ideas, concepts, techniques and methodologies conceived and first reduced to practice by Customer are and will remain the exclusive property of Customer or its customers (whether or not specifically recognized or perfected under local applicable law) (collectively, "Customer Content"), Subject to the foregoing, MorphoTrak reserves its rights in the Site and the Software Service. MorphoTrak will not take any action that jeopardizes Customer's or its customers' proprietary rights or acquire any right in the Customer Content, except that MorphoTrak may use Customer Content for the limited use contemplated under this Agreement for performance of services. Customer reserves its rights in any copy, translation, modification, adaptation or derivation of the Customer Content, including any improvement or development thereof.

8. **DISASTER RECOVERY** MorphoTrak's hosting subcontractor will be responsible for disaster recovery and business continuity execution related to the Services. If a disaster or major site impact occurs involving the need to recover operations at the affected site or to operate from a fallback site and, as a result, it is necessary for MorphoTrak to allocate limited resources between or among several organizations, MorphoTrak shall not treat Customer, in any respect, less favorably than any similarly situated MorphoTrak customer.

9. CONFIDENTIAL AND PROPRIETARY INFORMATION

a. Confidentiality. Customer may only keep confidential information, data, or records that has been properly designated as trade secret or proprietary information pursuant to Va. Code Ann. § 2.2-4342(F) or

is otherwise exempted from the provisions of the Virginia Freedom of Information Act, Va. Code Ann. § 2.2-3700, *et seq.* MorphoTrak and Customer acknowledge that in the performance of this Agreement, it may be necessary for Customer and MorphoTrak to disclose certain confidential or proprietary information of one party to the other party ("Confidential Information"). Morpho Trak acknowledges that the Customer is subject to public disclosure under the Virginia Freedom of Information Act and further acknowledges that such legislation shall take precedence over confidentiality provisions of this section as they apply to the Customer. MorphoTrak invokes the protection of the Virginia Freedom of Information Act, Va. Code Ann. § 2.2-3700, *et seq.* for the information contained on pages 5-8 of its Proposal regarding the section on Biometric Face Search. All information provided by the County shall be treated as Confidential Information and shall only be used by the Contractor to perform services under this contract. Confidential Information shall include (i) written information received from the other party ("Provider") that is marked or identified as confidential, (iiiand MorphoTrak further acknowledges that Customer Content is Confidential Information hereunder. Each party agrees thatwill use Confidential Information solely for the purposes expressly permitted by this Agreement. Subject to the requirements of the Virginia Freedom of Information Act, recipient will take all reasonable precautions necessary to safeguard the confidentiality of the Confidential Information. Recipient will not allow the removal or defacement of any confidentiality or proprietary notice placed on the Provider's Confidential Information. The placement of copyright notices on these items will not constitute publication or otherwise impair their confidential nature.

b. Limitation. Notwithstanding the foregoing, Provider Confidential Information will not include information that belongs to the Recipient or is (i) with the exception of personally identifiable information, already known by the Recipient without an obligation of confidentiality other than under this Agreement; (ii) publicly known or becomes publicly known through no unauthorized act of the Recipient; (iii) rightfully received from a third party under no duty of confidentiality; (iv) independently developed by the Recipient without use of the Provider's Confidential Information; (v) disclosed without similar restrictions to a third party by Provider; (vi) approved by the Provider for disclosure; or (vii) required to be disclosed pursuant to a requirement of law, , so long as the Recipient provides the Provider with timely notice prior to such disclosure.

c. Disclosure. Each Recipient may use Confidential Information received from the Provider only in connection with this Agreement, and may disseminate such Confidential Information only to persons and subcontractors having a need for access to such Confidential Information in connection with their performance or use of the Services, and with respect to whom the Recipient takes steps, no less rigorous than those it takes to protect its own confidential information, but in any event not less than reasonable means, to prevent such persons from acting in a manner inconsistent with the terms of this **Section** 9.

d. Return of Confidential Information.

e. Security. MorphoTrak's hosting subcontractor has implemented and will maintain and follow appropriate technical and organizational measures intended to protect the data on the Software Service against accidental, unauthorized or unlawful access, disclosure, alteration, loss, or destruction.

MorphoTrak agrees to use: (i) firewalls and other technology generally used in the trade to prevent unauthorized 3rd party access to its computer systems storing Customer Content or Confidential Information; and (ii) available encryption technology generally used in the trade to prevent unauthorized 3rd party access to transmissions containing Customer Content or Confidential Information. MorphoTrak shall notify Customer of any unauthorized 3rd party access to Customer Content, Confidential Information, or other security breach after MorphoTrak becomes aware of such event

f. Unauthorized Use or Disclosure. Each party acknowledges that the other may suffer irreparable damage in the event of any material breach of the provisions of this **Section 9**. Accordingly, in such event, a party may seek preliminary and final injunctive relief, as well as any other applicable remedies at law or in equity against the party who has breached or threatened to breach **Section** 9 of this Agreement.

10. FORCE MAJEURE Neither party will be liable to the other for any delay or inability to perform its obligations under this Agreement or otherwise, including relief from affected service levels, if such delay or inability arises from any act of God, fire, natural disaster, act of government, act of war (declared or undeclared), act of terrorism (domestic or international), riot, civil disturbance, manufacturer's shortages or constraints of parts, products, labor (other than a party's own workforce) or any other cause beyond the reasonable control of such party, whether or not foreseeable. In the event of such a delay or inability to perform, the time for performance will be extended for a period of time equal to the length of the delay or inability to perform, plus an additional reasonable period to recommence performance. If a force majeure event continues to prevent a party's performance for more than 30 days, the other party may terminate this Agreement upon written notice.

11. INDEPENDENT PARTIES In performing under this Agreement, MorphoTrak will be an independent contractor to Customer. Nothing in this Agreement will be interpreted or construed as creating or establishing an employer-employee relationship, an agency relationship, a partnership or joint venture between the parties.

12. SUBCONTRACTORS Subject to the prior written approval of the County Purchasing Agent, MorphoTrak reserves the right to subcontract the performance of the Services, or any part thereof, to any subcontractor selected by MorphoTrak.

13. MISCELLANEOUS

a. Notices. All notices or approvals required or permitted under this Agreement must be given in writing. Legal notices to MorphoTrak or to Customer shall be delivered by recognized overnight courier service, to the address on the first page hereof.

b. Waiver and Amendment. Any waiver or modification of this Agreement will not be effective unless executed in writing and signed by the party against whom the waiver or modification will be enforced or, alternatively, both parties. Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. Failure by either party to exercise any right or remedy under this Agreement does not signify acceptance of the event or waiver of any such right or remedy. This Agreement will bind Customer's successors-in-interest.

c. Severability. If any provision of this Agreement is held to be unenforceable, in whole or in part, such holding will not affect the validity of the other provisions of this Agreement.

d. Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together will constitute the Agreement.

e. Headings. The headings in this Agreement are not intended to be used as an aid to interpretation.

f. Entire Agreement. Contract Number 4400006490, this agreement, and any relevant amendments constitutes the complete and entire statement of all conditions and representations of the agreement between MorphoTrak and Customer with respect to its subject matter and supersedes all prior writings, discussions, representations or understandings.

IN WITNESS WHEREOF, MorphoTrak and Customer cause this Agreement to be executed by their duly authorized representatives identified below.

MorphoTrak, LLC

By: _____

Name: Celeste Thomasson

Title: President & CEO

Date: 03/29/2017

Northern Virginia Regional Identification System

By: _____

Name: David Russell

Title: Director of NOVARIS

Date: 3/31/2017

Fairfax County

By: _____

Name: **Steve Pierson, CPPB**

Title: **Contracts Manager**

Date: 3/31/2017

Exhibit A Software License Agreement

For good and valuable consideration, the parties agree as follows:

SECTION 1 DEFINITIONS

1.1. "Agreement" means this Exhibit

1.2. "Designated Products" means products provided by MorphoTrak to Licensee with which or for which the Software and Documentation is licensed for use.

1.3. "Documentation" means product and software documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Software (including all physical or electronic media upon which such information is provided).

1.4. "Licensor" means Morpho Trak LLC ("Morpho Trak")

1.5. "Licensee" means the Customer

1.6. "Open Source Software" means software with either freely obtainable source code, license for modification, or permission for free distribution.

1.7. "Open Source Software License" means the terms or conditions under which the Open Source Software is licensed.

1.8. "Primary Agreement" means the agreement to which this exhibit is attached (Biometrics Cloud Solution and System Sales Agreement).

1.9. "Security Vulnerability" means a flaw or weakness in system security procedures, design, implementation, or internal controls that could be exercised (accidentally triggered or intentionally exploited) and result in a security breach such that data is compromised, manipulated or stolen or the system damaged.

1.10. "Software" (i) means proprietary software in object code format, and adaptations, translations, de-compilations, disassemblies, emulations, or derivative works of such software; (ii) means any modifications, enhancements, new versions and new releases of the software provided by MorphoTrak; and (iii) may contain one or more items of software owned by a third party supplier. The term "Software" does not include any third party software provided under separate license or third party software not licensable under the terms of this Agreement.

1.11. "Third Party" means any other customer end-users not part of NOVARIS.

SECTION 2 SCOPE

MorphoTrak and Licensee enter into this Agreement in connection with MorphoTrak's delivery of certain proprietary Software or products containing embedded or pre-loaded proprietary Software, or both. This Agreement contains the terms and conditions of the license MorphoTrak is providing to Licensee, and Licensee's use of the Software and Documentation.

SECTION 3 GRANT OF LICENSE

3.1 Subject to the provisions of this Agreement and the payment of applicable license fees, MorphoTrak grants to Licensee a personal, limited, non-transferable (except as permitted in Section 7) and non-exclusive license under MorphoTrak's copyrights and Confidential Information (as defined in the Primary Agreement) embodied in the Software to use the Software, in object code form, and the

Documentation solely in connection with Licensee's use of the Designated Products. This Agreement does not grant any rights to source code.

SECTION 4 LIMITATIONS ON USE

4.1 Licensee may use the Software only for Licensee's internal business purposes and only in accordance with the Documentation. Any other use of the Software is strictly prohibited. Without limiting the general nature of these restrictions, Licensee will not make the Software available for use by third parties on a "time sharing," "application service provider," or "service bureau" basis or for any other similar commercial rental or sharing arrangement.

4.2 Licensee will not, and will not allow or enable any third party to: (i) reverse engineer, disassemble, peel components, decompile, reprogram or otherwise reduce the Software or any portion to a human perceptible form or otherwise attempt to recreate the source code; (ii) modify, adapt, create derivative works of, or merge the Software; (iii) copy, reproduce, distribute, lend, or lease the Software or Documentation to any third party, grant any sublicense or other rights in the Software or Documentation to any third party, or take any action that would cause the Software or Documentation to be placed in the public domain; (iv) remove, or in any way alter or obscure, any copyright notice or other notice of MorphoTrak's proprietary rights; (v) provide, copy, transmit, disclose, divulge or make the Software or Documentation available to, or permit the use of the Software by any third party or on any machine except as expressly authorized by this Agreement; or (vi) use, or permit the use of, the Software in a manner that would result in the production of a copy of the Software solely by activating a machine containing the Software. Licensee may make one copy of Software to be used solely for archival, back-up, or disaster recovery purposes; provided that Licensee may not operate that copy of the Software at the same time as the original Software is being operated. Licensee may make as many copies of the Documentation as it may reasonably require for the internal use of the Software.

4.3 Unless otherwise authorized by MorphoTrak in writing, Licensee will not, and will not enable or allow any third party to: (i) install a licensed copy of the Software on more than one unit of a Designated Product; or (ii) copy onto or transfer Software installed in one unit of a Designated Product onto another device. Licensee may temporarily transfer Software installed on a Designated Product to another device if the Designated Product is inoperable or malfunctioning, if Licensee provides written notice to MorphoTrak of the temporary transfer and identifies the device on which the Software is transferred. Temporary transfer of the Software to another device must be discontinued when the original Designated Product is returned to operation and the Software must be removed from the other device. Licensee must provide prompt written notice to MorphoTrak at the time temporary transfer is discontinued.

SECTION 5 OWNERSHIP AND TITLE

MorphoTrak, its licensors, and its suppliers retain all of their proprietary rights in any form in and to the Software and Documentation, including, but not limited to, all rights in patents, patent applications, inventions, copyrights, trademarks, trade secrets, trade names, and other proprietary rights in or relating to the Software and Documentation (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, emulations to or derivative works from the Software or Documentation, whether made by MorphoTrak or another party, or any improvements that result from MorphoTrak's processes or, provision of information services). No rights are granted to Licensee under this Agreement by implication, estoppel or otherwise, except for those rights which are expressly granted to Licensee in this Agreement. All intellectual property developed, originated, or prepared by MorphoTrak in connection with providing the Software, Designated Products, Documentation or related services, remains vested exclusively in MorphoTrak, and Licensee will not have any shared development or other intellectual property rights.

SECTION 6 LIMITED WARRANTY; DISCLAIMER OF WARRANTY

6.1 If Licensee is not in material breach of any of its obligations under this Agreement, MorphoTrak warrants that the unmodified Software, when used properly and in accordance with the Documentation and this Agreement, will be free from a reproducible defect that eliminates the functionality or successful operation of a feature critical to the primary functionality or successful operation of the Software. Whether a defect occurs will be determined by MorphoTrak solely with reference to the Documentation. MorphoTrak does not warrant that Licensee's use of the Software or the Designated Products will be uninterrupted, error-free, completely free of Security Vulnerabilities. MorphoTrak makes no representations or warranties with respect to any third party software included in the Software.

6.2 MorphoTrak's sole obligation to Licensee and Licensee's exclusive remedy under this warranty is to use reasonable efforts to remedy any material Software defect covered by this warranty. These efforts will involve either replacing the media or attempting to correct significant, demonstrable program or documentation errors or Security Vulnerabilities. If MorphoTrak cannot correct the defect within a reasonable time, then at MorphoTrak's option, MorphoTrak will replace the defective Software with functionally-equivalent Software, license to Licensee substitute Software which will accomplish the same objective, or terminate the license and refund the Licensee's paid license fee.

6.3 Warranty claims are described in the Primary Agreement.

6.4 The express warranties set forth in this Section 6 are in lieu of, and MorphoTrak disclaims, any and all other warranties (express or implied, oral or written) other than those set forth in the Primary Agreement and all amendments thereto with respect to the Software License or Documentation, including, without limitation, any and all implied warranties, whether arising by law, by reason of custom or usage of trade, or by course of dealing. In addition, MorphoTrak disclaims any warranty to any person other than Licensee with respect to the Software License or Documentation.

SECTION 7 TRANSFERS

Licensee will not transfer the Software or Documentation to any third party without MorphoTrak's prior written consent. MorphoTrak's consent may be withheld at its discretion and may be conditioned upon transferee paying all applicable license fees and agreeing to be bound by this Agreement.

SECTION 8 TERM AND TERMINATION

8.1 Licensee's right to use the Software and Documentation will begin when the Primary Agreement is signed by both parties and will continue for the life of the Designated Products with which or for which the Software and Documentation have been provided by MorphoTrak, unless Licensee breaches this Agreement, in which case this Agreement and Licensee's right to use the Software and Documentation may be terminated immediately upon notice by MorphoTrak.

8.2 Within thirty (30) days after termination of this Agreement, Licensee must certify in writing to MorphoTrak that all copies of the Software have been removed or deleted from the Designated Products and that all copies of the Software and Documentation have been returned to MorphoTrak or destroyed by Licensee and are no longer in use by Licensee.

SECTION 9 GENERAL

9.1 COPYRIGHT NOTICES. The existence of a copyright notice on the Software will not be construed as an admission or presumption of publication of the Software or public disclosure of any trade secrets associated with the Software.

9.2 COMPLIANCE WITH LAWS. Licensee acknowledges that the Software is subject to the laws and regulations of the United States and Licensee will comply with all applicable laws and regulations, including export laws and regulations of the United States. Licensee will not, without the prior authorization of MorphoTrak and the appropriate governmental authority of the United States, in any form export or re-export, sell or resell, ship or reship, or divert, through direct or indirect means, any

item or technical data or direct or indirect products sold or otherwise furnished to any person within any territory for which the United States Government or any of its agencies at the time of the action, requires an export license or other governmental approval. Violation of this provision is a material breach of this Agreement.

9.3 GOVERNING LAW. This Agreement is governed by the laws of the United States to the extent that they apply and otherwise by the internal substantive laws of the State to which the Software is shipped if Licensee is a sovereign government entity, or the internal substantive laws of the State of Delaware if Licensee is not a sovereign government entity. The terms of the U.N. Convention on Contracts for the International Sale of Goods do not apply. In the event that the Uniform Computer Information Transaction Act, any version of this Act, or a substantially similar law (collectively "UCITA") becomes applicable to a party's performance under this Agreement, UCITA does not govern any aspect of this Agreement or any license granted under this Agreement, or any of the parties' rights or obligations under this Agreement. The governing law will be that in effect prior to the applicability of UCITA.

9.4 THIRD PARTY BENEFICIARIES. This Agreement is entered into solely for the benefit of MorphoTrak and Licensee. No third party has the right to make any claim or assert any right under this Agreement, and no third party is deemed a beneficiary of this Agreement. Notwithstanding the foregoing, any licensor or supplier of third party software included in the Software will be a direct and intended third party beneficiary of this Agreement.

9.5 PREVAILING PARTY. In the event of any dispute arising out of the subject matter of this Agreement, the prevailing party shall recover, in addition to any other damages assessed, its reasonable attorneys' fees and court costs incurred in arbitrating, litigating, or otherwise settling or resolving such dispute.

9.6 SURVIVAL. Sections 4, 5, 6.3, 7, 8, and 9 survive the termination of this Agreement.